

REMARKS

This responds to the Office Action mailed on January 14, 2008.

Claims 1, 10, 22, 38, 42, and 43 are amended and claims 8 and 28 are canceled; as a result, claims 1-7, 9-27, and 29-43 are now pending in this application.

Claim Objections

Claim 38 was objected to as being of improper dependent form for failing to further limit the subject matter of a previous claim. Claim 38 was indicated to be a duplicate of claim 33.

Claim 38 has been amended to place the claim in proper dependent form.

§102 Rejection of the Claims

Claims 1-18, 20-39 and 41-43 were rejected under 35 U.S.C. § 102(e) for anticipation by Junger (U.S. Publication No. 2004/0172260). This rejection is respectfully traversed.

To anticipate a claim, the reference must teach every element of the claim. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). It is not enough, however, that the prior art reference discloses all the claimed elements in isolation. Rather, "[a]nticipation requires the presence in a single prior reference disclosure of each and every element of the claimed invention, *arranged as in the claim*." *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)) (emphasis added).

Junger discusses an "electronic registration system" that "facilitates authorized product returns and reduces the incidence of improper returns." (Junger abstract)

Applicant respectfully submits that the Office Action did not make out a *prima facie* case of anticipation because Junger does not describe each and every element of Applicant's claims arranged as in the claims.

Claims 1, 22, 42, and 43

Claim 1 has been amended to include the added limitation of “providing a guarantee interface for a buyer to activate the money-back guarantee associated with an eligible transaction.” As amended, Claim 1 recites:

A method of providing a money-back guarantee for a transaction in a network-based marketplace, the method including:

providing a guarantee interface for a buyer to activate the money-back guarantee associated with an eligible transaction;

receiving, over a network, a reimbursement request against the money-back guarantee for the eligible transaction;

responsive to receiving the reimbursement request, verifying the reimbursement request is eligible for the money-back guarantee; and

electronically reimbursing a buyer a predetermined amount associated with the eligible transaction and the money-back guarantee.

(Emphasis added)

The Office Action argues that Junger discloses “providing a guarantee interface for the buyer to activate the money-back guarantee associated with the eligible transaction” in its argument rejecting claims 8 and 28. To support this, the Office Action cites paragraph [0183] of Junger. (Office Action p. 4, lines 4-6). Applicant respectfully disagrees.

Junger paragraph [0183] states:

Once the product is determined to be eligible for return ... additional menus ... will appear to prompt the user for any additional desired information. This information may be ... used to determine if the person attempting to return the product is, in fact, the rightful or original owner of the particular product and is eligible for a return credit. ... If the [electronic registration] system determines that the product is eligible for return, the customer is provided with a pre-return return authorization (RA), as well as detailed instructions on where to ship the product, who to expect a refund from and the approximate processing time.

Junger paragraph [0183] at most discloses an interface in which a user is prompted for information that is used to determine if the person is eligible for a return. This is not the same as “a guarantee interface for the buyer to activate the money-back guarantee associated with the eligible transaction.” It should be further noted that claim 1 requires both, “providing a guarantee interface for a buyer to activate the money-back guarantee” and “receiving ... a reimbursement request.”

Junger discusses a “for the purpose of validating legitimate returns.” (Junger [0183]) This seems associated more with a tool used by buyers to help them return products. (Junger [0177]) This does not allow a buyer to “activate a money-back guarantee.” In Junger, whether an item is eligible for return is determined by the “ER database” (Junger [0182]) using various item details, such as serial number, purchase date, purchase store, purchase location, etc., (Junger [0178]) and the return and warranty policy for each product that is provided by the participating manufacturer or other vendor. (Junger [0088], See also Junger [0098])

To summarize, in Junger, whether a product is able to be returned is based on the detail of the product (serial numbers, purchase date, purchase location, etc.) and the return and warranty policies provided by manufacturers or vendors that do not leave any room for buyer discretion. Junger does not teach a buyer activating a money-back guarantee as claimed in the present invention.

Claims 22, 42, and 43 recite similar limitations as claim 1 and therefore should be allowable for at least the reasons presented above and Applicant respectfully requests notification of the same.

Claims 2-7, 9-18, 20- 21, 23-27, 29-39, and 41

Claims 2-7, 9-18, 20- 21, 23-27, 29-39, and 41 depend from independent claims 1 and 22 and incorporate all elements therein. Accordingly claims 2-7, 9-18, 20- 21, 23-27, 29-39, and 41 are allowable for at least the reasons presented above, and Applicant respectfully requests notification of the same.

Further, Applicant asserts that the additional elements of claims 2-7, 9-18, 20- 21, 23-27, 29-39, and 41 further distinguish the Junger reference, as applied in the Office Action, and Applicant reserves the right to present arguments to this effect at a later date.

§103 Rejection of the Claims

Claims 19 and 40 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Junger in view of Harrison (U.S. Publication No. 2001/0039524).

Claims 19 and 40 are dependent on claim 1 and claim 22 respectively and incorporate all the elements therein. Accordingly, claims 19 and 40 are also asserted to be allowable for the reasons presented above, and Applicant respectfully requests notification of the same. Further combining the teachings of Harrison to Junger fails to cure Junger's defects as detailed above.

Applicant considers the additional elements of claims 19 and 40 to further distinguish over Harrison and Junger as applied in the Office Action, and Applicant reserves the right to present arguments to this effect at a later date.

Reservation of Rights

In the interest of clarity and brevity, Applicant may not have equally addressed every assertion made in the Office Action, however, this does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicant timely objects to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicant reserves all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at 408-278-4042 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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Date 04/16/08

By /

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 14 day of April, 2008

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